

# **Notice of Allowability**

**Application No.**

09/822,080

**Examiner**

Medina A Ibrahim

**Applicant(s)**

STEWART ET AL.

**Art Unit**

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 06/24/04.
2. ☒ The allowed claim(s) is/are 1, 3-8, 10-11, 13-16, and 18-20 renumbered as 1-16, respectively.
3. ☒ The drawings filed on 30 March 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## **Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 07/06/04 .
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Noreen Connolly on 07/06/04.

The application has been amended as follows:

#### In The Claims:

Claim 1. (Currently amended) A nucleic acid construct comprising:

a [one or more operatively linked nucleic acid molecules, wherein the] nucleic acid molecule that encodes a Kuntz-type serine proteinase inhibitor [ isolated from *Brassica oleracea*, wherein the serine proteinase inhibitor has insect antibiosis activity and], wherein the nucleic acid molecule either: (a) has the [a] nucleotide sequence of SEQ ID NO: 1 or (b) encodes a protein having the amino acid sequence of SEQ ID NO: 2;

an operably linked heterologous DNA promoter; and

an operably linked 3' regulatory region.

Claim 3. (Currently amended) An expression system comprising [:] the nucleic acid construct according to claim 1.

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At claim 13, "plant is" in line 2 has been replaced with ---seed is from a plant---.

Claim 14 (Currently amended). A method for conferring resistance to insects to a plant or plant seed [plants] comprising:

transforming a plant or plant seed with the nucleic acid construct according to claim 1; and growing the transformed plant or plant seed [plants produced from the seeds of the transformed plant] under conditions effective to impart resistance to insects.

Claim 15. (Currently amended). A [The method according to claim 14, wherein a] transgenic plant produced by the method according to claim 14 [is provided].

Claim 16. (Currently amended). A [The method according to claim 14, wherein a] transgenic plant seed produced by the method according to claim 14 [is provided].

Claim 18 (Currently amended). The method according to claim 14, wherein the insects are selected from the group [a] consisting of [the orders of] Lepidoptera, Coleoptera, Diptera, Homoptera, Hemiptera, Thysanoptera, and Orthoptera.

At claim 19, "(tobacco budworm)" and "(corn earworm)" have been deleted.

#### **Contact information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571) 272-0797. The Examiner can normally be reached Monday -Thursday from 8:00AM to 5:30PM and every other Friday from 9:00AM to 5:00 PM . Before and after final responses should be directed to fax nos. (703) 872-9306 and (703) 872-9307, respectively.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Amy Nelson, can be reached at (571) 272-0804.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mai

7/9/04

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